

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

DEMAR WORRELL,

Plaintiff,

v.

NORTH CAROLINA DIVISION OF
MOTOR VEHICLES OF THE CITY OF
RALEIGH, NORTH CAROLINA,

Defendant.

1:23CV7

ORDER

The Order and Recommendation of the United States Magistrate Judge was filed with the court in accordance with 28 U.S.C. § 636(b) and, on June 15, 2023, was served on the parties in this action. (ECF Nos. 18, 19.) No objections were filed within the time prescribed by § 636.¹

The Court hereby adopts the Magistrate Judge's Recommendation.

Although no objections were filed, Plaintiff filed a response which the undersigned construes as a motion to amend the Complaint, attaching the proposed amended complaint. (ECF Nos. 20, 20-1.) In the proposed amended complaint Plaintiff names a new defendant, the North Carolina Division of Motor Vehicles Commissioner in his official capacity, and essentially reasserts the allegations from the original Complaint regarding Plaintiff's suspended

¹The Clerk docketed Plaintiff's response as objections to the Recommendation. As noted herein, the undersigned construes this document as a motion to amend the Complaint. However, to the extent Plaintiff's response was intended as objections to the Recommendation, a *de novo* review would not change the determinations as stated herein.

driver's license for over 25 years for failure to "Deposit Security" in violation of his constitutional rights. (*See* ECF No. 20-1.) Additionally, for relief Plaintiff seeks only monetary damages. (*Id.*) Although, the right to amend is construed liberally, Fed. R. Civ. P. 15(a), here the proposed amended complaint would be futile for the same reasons articulated in the recommendation as Plaintiff only seeks monetary damages from a defendant who is immune from such relief. *Katyle v. Penn Nat'l Gaming, Inc.*, 637 F.3d 462, 471 (4th Cir. 2011) ("Futility is apparent if the proposed amended complaint fails to state a claim under the applicable rules and accompanying standards[.]"); *see also Bailey v. Marsh*, No. 5:09CV180, 2009 WL 1705610, at *2 (E.D.N.C. June 11, 2009) (unpublished) ("Pursuant to the Eleventh Amendment of the United States Constitution, a State is immune from suits in federal courts that seek monetary damages. . . . This immunity extends to 'arms of the state,' including state agencies and state officers acting in their official capacity.") (*citations omitted*).

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation, (ECF No. 18), is **ADOPTED**.

IT IS FURTHER ORDERED that the Complaint, (ECF No. 2), be **DISMISSED** without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B).

IT IS FURTHER ORDERED that Plaintiff's Response, construed as a Motion to Amend the Complaint, (ECF No. 20), be **DENIED**.

This, the 22nd day of June 2023.

/s/ Loretta C. Biggs
United States District Judge